UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ELAINE M. CHANDLER

Plaintiff,

Civil Action No. 5:17-CV-457 (GTS/ATB)

v.

Complaint

HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY ("HMH"), AND ITS EMPLOYEES, MASSIMO RUBINI, INDIVIDUALLY AND IN HIS CAPACITY AS HMH MANAGER, JOHN HURLEY, INDIVIDUALLY AND IN HIS CAPACITY AS HMH MANAGER

Defendants.

U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
APR 2 6 2017
AT ____ O'CLOCK ____
Lawrence K. Baerman, Clerk - Syracuse

INTRODUCTION

1. The basis for Jurisdiction is the federal statute of employment discrimination, Title VII of the Civil Rights Act of 1964, as amended, and the disputed amount is over $75,000.00.

2. This U.S. District Court has venue of this case based on the residence of the Plaintiff in Onondaga County, and where Plaintiff had a home office as an account executive for Houghton Mifflin Harcourt Publishing Company ("HMH"), covering the territories of upstate New York ("NY") and western Pennsylvania ("PA").

3. Additionally, this Court has venue because incidents discussed herein occurred within the N.D.N.Y. jurisdiction counties.

4. This case has been filed with the Equal Employment Opportunity Commission ("EEOC"), from whom a right to sue letter has been issued within the past 90 days.

5. Plaintiff brings this action of unlawful discrimination claims pursuant to Title VII of the Civil Rights Law of 1964, 42 U.S.C. §§ 1983 and 1988, as well as pendent state law claims pursuant to New York Executive Law § 296, the New York State Constitution, article 1, § 11, and New York Civil Rights Law § 40-c, arising out of the events leading up to, and including, Plaintiff's cessation of employment at HMH.

6. Specifically, Plaintiff was subjected to unwelcome sexual advances in an implied quid pro quo sexual harassment.

7. Plaintiff's refusal to submit and her reaction to the harassment affected the tangible aspects of her employment.

8. As a result of the foregoing, the conduct of the Defendants, HMH and its managers, Massimo Rubini ("Rubini"), and John Hurley ("Hurley"), was a substantial factor in the intentional infliction of emotional distress, physical decline, and economic harm upon Plaintiff.

PARTIES TO THE ACTION

9. Plaintiff, Elaine M. Chandler, former employee of HMH, who resides in Fayetteville, NY.

10. Defendant, HMH, maintains headquarters at 125 High St, Boston, MA, 02110, an international publisher of textbooks and digital educational programs.

11. Defendant, Rubini, HMH Upstate New York Field Sales Manager, upon information and belief, has a home office located in Westchester County in NY.

12. Defendant, Hurley, HMH Mid-Atlantic District Manager, upon information and belief, has a home office located in the Chicago, Illinois area.

FACTS

13. In February 2014, Plaintiff was recruited by HMH Upstate New York Field Sales Manager Amy Senius ("Senius"), for a position as an Account Executive for upstate NY and western PA, selling textbooks and digital education programs to private, parochial and charter schools.

14. Senius recruited Plaintiff upon recommendation from a current HMH employee, and because Plaintiff had been a top performer in one of the smaller divisions of HMH during her previous employment from February 2005 until February 2012.

15. After receiving a job offer from Senius, Plaintiff returned to HMH in February 2014, reporting directly to Senius.

16. This position required Plaintiff to have a home office where Plaintiff lived, and to drive across NY and PA to visit schools, present textbook programs, attend book exhibits and promote the HMH's education programs at luncheons and other promotional gatherings.

17. Typically, a HMH manager would accompany account executives on visits several times a year at various field locations of the HMH manager's choosing.

18. In November 2014, at a sales training, Senius told Plaintiff that a new employee, Rubini, had been hired for an entry level position, and Senius asked Plaintiff to help Rubini "get up to speed on HMH products."

19. Plaintiff later walked up to Rubini in the hallway, told him what Senius had asked her to do, and offered for him to attend an upcoming presentation to school principals in Albany, NY.

20. Rubini did not respond in words; rather, he gave a sly smile, looked Plaintiff up and down, and walked away.

21. In or about January, 2015, Senius announced that Rubini had been promoted from entry level position to Senius's Assistant Manager.

22. Plaintiff was told to report to Rubini.

23. In April 2015, Rubini informed Plaintiff that he would be attending her presentations on two consecutive days, in Buffalo, NY, and in Albany, NY.

24. At the presentation in Buffalo, NY, Rubini spent most of the time talking with a female account executive from another company at that company's booth, located next to HMH's booth, while Plaintiff presented the HMH products in the HMH booth by herself.

25. Rubini spent so much time with the other account executive, that Plaintiff heard several teachers ask him what position he held for that company.

26. Rubini responded that he did not work for that company; that he worked for HMH. He then came over to the HMH booth and stood with Plaintiff.

27. Rubini looked Plaintiff up and down and made comments about Plaintiff's outfit.

28. At one point, Rubini made a gesture to hug Plaintiff.

29. Rubini hugged Plaintiff more tightly and for longer than a casual friend would do.

30. Plaintiff told Rubini that the hug felt uncomfortable to her.

31. Rubini then walked over and talked to the other female again, and left before the rest of the day's presentations.

32. At the Albany, NY, presentation the following day, Rubini looked Plaintiff up and down and commented on Plaintiff's outfit.

33. In May 2015, Rubini attended a luncheon Plaintiff had scheduled in Pittsburgh, PA, for the Diocese of Pittsburgh Superintendent and other top administrators.

34. At the end of the luncheon, while the administrators were still present, Rubini hugged Plaintiff and slid his hand down Plaintiff's backside.

35. The foregoing behavior was intentional groping in an atmosphere where Plaintiff was not able to say anything, due to the presence of high level customers.

36. After the administrators left, Plaintiff told Rubini that she did not want to be touched in that way; that it was highly inappropriate.

37. Rubini responded by saying, "I was hired because I have special qualities."

38. In or about June 2015, Plaintiff, who had been under the care of a cardiologist for arrhythmias, expressed to him that she felt extremely stressed because of the sexual harassment by Rubini. Plaintiff's cardiologist noted that Plaintiff's blood pressure had increased dramatically, and placed Plaintiff on blood pressure medication, in addition to her heart medication.

39. In July 2015, at another presentation for administrators in Pittsburgh, PA, Rubini looked Plaintiff up and down, but kept a distance from Plaintiff.

40. Rubini kept a distance in front of other HMH employees who were present.

41. On September 24, 2015, Rubini attended Plaintiff's scheduled school visits with her.

42. At the end of the day's visits on September 24, 2015, Rubini directed Plaintiff to present a revenue plan to him in his hotel lobby.

43. Plaintiff presented a revenue plan, which included an additional large amount of orders from western PA schools that were waiting for the PA School Budget to pass.

44. Rubini said that he was appreciative of Plaintiff's revenue plan, and hugged Plaintiff. Rubini's hand slid down Plaintiff's backside again.

45. Plaintiff told Rubini again that she did not like his behavior, and that she was going to report it. Plaintiff left the hotel lobby and drove home.

46. The following day, September 25, 2015, Plaintiff looked on HMH's employee website for how to report sexual harassment, and discovered the procedure was to report the behavior to one's immediate supervisor.

47. Since Rubini was Plaintiff's immediate supervisor, reporting it to him, the perpetrator, was too intimidating.

48. Instead, Plaintiff confided to two other account executives.

49. From October until December 2015, Rubini did not contact Plaintiff to visit schools together.

50. On December 23, 2015, at 5:00 pm, on the eve of Plaintiff's approved vacation, Rubini called Plaintiff regarding her performance review for 2015. Rubini said the phone call was a substitute for HMH's required face-to-face discussion of performance.

51. On the phone call, Rubini subjected Plaintiff to an unwarranted poor performance rating of "does not meet expectations."

52. When Plaintiff questioned Rubini why he gave her a poor performance rating, Rubini said it was because Plaintiff's territory goal was at 64%.

53. Plaintiff reminded Rubini that he was well aware of the additional large amount of orders being held due to the PA School Budget impasse, placing her territory at 92%, indicating a strong 2015 performance, and which Plaintiff had documented in HMH's online sales reporting system, as well as HMH's online performance review system.

54. Rubini then said the poor review was because of "commit ratio," telling Plaintiff that "commit ratio" was an algorithm in HMH's online sales reporting system.

55. The term or concept "commit ratio" had never been discussed with Plaintiff.

56. Even if "commit ratio" had been discussed, Plaintiff would not have had time to understand it or correct it.

57. Rubini then told Plaintiff that she must sign the performance review that evening, before Plaintiff could go on her approved vacation.

58. Plaintiff refused to sign the review, and sent an email to HMH's Human Resources ("HR") department regarding the performance review conversation with Rubini.

59. When HMH's HR department emailed Rubini, and copied Plaintiff, Rubini denied that he had discussed "commit ratio" during the performance review phone call with Plaintiff.

60. The foregoing poor performance review was a tangible job detriment as retaliation for Plaintiff's rejection of, and reaction to, unwelcome sexual advances by Rubini.

61. In 2015, HMH account executives in other National divisions, had low territory percentages of 60%-80% due to a slump in sales, but did not receive poor performance reviews.

62. In 2015, HMH account executives in other NY divisions, specifically, the public school division and the assessment division, had low territory percentages of 60%-80%, but did not receive poor performance reviews.

63. From December 2015 until February 2016, Plaintiff met with a mental health counselor to talk about her emotional distress and job detriment stemming from the sexual harassment by Rubini.

64. Around that same time, Plaintiff also received an announcement, that, as of January 1, 2016, Rubini would no longer be Plaintiff's manager. Plaintiff's new manager would be HMH NY Field Sales Manager Lynn Robson ("Robson").

65. Even though Robson was named as Plaintiff's manager, Plaintiff was contacted by second level manager, HMH Mid-Atlantic District Manager Hurley, and was told that Hurley himself would be traveling from Chicago, Illinois, to upstate NY to work with Plaintiff exclusively.

66. Hurley then told Plaintiff that her territory had been revised, and that the part of the territory that included PA was being removed.

67. This removal represented the most lucrative part of Plaintiff's territory, which still had the additional large amount of orders waiting for the PA School Budget to pass, that Plaintiff had previously presented in her revenue plan to Rubini.

68. Plaintiff's new revised territory was mostly a rural, non-lucrative territory that had been plagued with school closures.

69. The large amount of PA orders were given to another account executive, who later received a large bonus due to the addition of Plaintiff's orders.

70. On February 9, 10, and 11, 2016, Hurley traveled to Albany, NY to accompany Plaintiff on school visits.

71. Instead of the usual practice of taking separate cars to school visits, Hurley informed Plaintiff that he would be riding with Plaintiff in her car.

72. While sitting in the car in a parking lot after the first school visit, Hurley told Plaintiff that he was good friends with Rubini, and that Hurley did not like the way Plaintiff had treated Rubini.

73. Hurley said that he hoped Plaintiff would treat him better than Plaintiff had treated Rubini.

74. As Hurley said this, Hurley took Plaintiff's hand and held it in his own hand.

75. Plaintiff asked Hurley what he meant. Hurley released Plaintiff's hand and instructed Plaintiff to drive to the next school visit.

76. Later, while driving between visits, Hurley repeated the statement that he hoped Plaintiff would treat him better than Plaintiff had treated Rubini.

77. Hurley could not take Plaintiff's hand, because Plaintiff's hand was on the steering wheel, so Hurley rubbed Plaintiff's forearm.

78. Plaintiff again asked Hurley what he meant. Hurley did not respond, and removed his hand.

79. The foregoing statements and touching constitute sexual innuendos.

80. Hurley, who was married, was well known by other account executives within HMH for having had at least one affair with a female HMH employee.

81. On February 10, 2016, while eating lunch at a restaurant with Hurley, Plaintiff reported to Hurley about Rubini's inappropriate behavior of hugging and groping.

82. Plaintiff reported Rubini's behavior to Hurley on the expectation that, as Hurley's managerial level was above Rubini's, Hurley would report Rubini's inappropriate behavior.

83. Plaintiff reported Rubini's behavior to Hurley so that Hurley would direct no further innuendos of his own toward Plaintiff.

84. Hurley became annoyed, looked away, and said, "Well, he's Italian."

85. After lunch, Hurley told Plaintiff to drop him off at his hotel, that he would not be accompanying Plaintiff on school visits for the rest of the day.

86. Hurley then told Plaintiff to show up at his hotel lobby the next morning, February 11, 2016, at 8:30 am.

87. The next morning, February 11, 2016, Plaintiff arrived at the hotel lobby at 8:30 am, and was met by Hurley.

88. Hurley instructed Plaintiff to wait in the lobby while he finished some paperwork.

89. After approximately one hour, Hurley reappeared and presented Plaintiff with a thirty-day performance improvement plan that was impossible to execute.

90. The foregoing performance improvement plan was a further tangible job detriment as retaliation for Plaintiff's rejection of, and reaction to, unwelcome sexual overtures by Hurley.

91. Plaintiff asked Hurley why she was being punished.

92. Hurley responded that he was told to do this by the "powers that be."

93. Plaintiff asked Hurley who the "powers that be" were.

94. Hurley became visibly flustered, and said, "My supervisors!" but would not give any names.

95. Hurley told Plaintiff that he would not accompany her on any more school visits.

96. It was well known within HMH that if a manager believed an account executive needed help in improving his or her performance, the HMH manager would accompany the account executive on visits to critique him or her.

97. Over a full three-day period in which Hurley was supposed to be accompanying Plaintiff on school visits, Hurley spent approximately one-half of one day with Plaintiff.

98. From February 11, 2016, until March 4, 2016, during the time period of the performance improvement plan, Hurley became increasingly hostile toward Plaintiff, telling Plaintiff that she must perform numerous impossible expectations not written into the original performance improvement plan.

99. Hurley threatened to fire Plaintiff if she did not execute the plan exactly as Hurley told her to.

100. The plan required, *inter alia,* that Plaintiff schedule face to face meetings with six administrators each day.

101. Additionally, the plan required that Plaintiff fill out a two-page report form requiring extensive handwritten answers, fax the completed form to Hurley before each visit; then revise the written answers on the form after each visit, and fax the newly revised form to Hurley immediately afterward.

102. The foregoing expectation was impossible for three reasons; (1) Plaintiff had to drive to schools that were geographically distanced; (2) fax machines in the field were not readily available; (3) as well as being impossible to handwrite twelve to twenty-four pages of reports in the course of each work day, it was also a duplication of Plaintiff's efforts of typing the same information into HMH's online sales reporting system.

103. Other HMH employees placed on performance improvement plans had not been required to complete such an impossible task.

104. The foregoing plan and expectation constituted an intentional infliction of emotional distress by Hurley.

105. On February 19, 2016, Plaintiff filed a sexual harassment complaint directly with HMH's HR administrators.

106. HMH's HR department did not respond to Plaintiff's complaint until seven days later, on February 26, 2016.

107. HMH's HR representative, Barbara Schmidt ("Schmidt"), called Plaintiff to inquire about the details of Plaintiff's complaint.

108. Plaintiff informed Schmidt the dates and details of Rubini's behavior.

109. Plaintiff informed Schmidt that Plaintiff had reported the behavior to Hurley during lunch on February 10, 2016.

110. Plaintiff informed Schmidt Hurley's response to Plaintiff's reporting of Rubini's behavior.

111. Plaintiff informed Schmidt that Hurley had not reported or addressed the behavior.

112. Plaintiff told Schmidt that Plaintiff had been retaliated against for her rejection of, and reaction to, unwelcome sexual advances with a poor performance review, as well as a subsequent impossible performance improvement plan.

113. Schmidt told Plaintiff that there would be an investigation, and that Schmidt would get back to Plaintiff the following week.

114. The following week, around March 2, 2016, Plaintiff called Schmidt, leaving a message on Schmidt's voicemail, inquiring if Schmidt had conducted an investigation.

115. Schmidt did not return Plaintiff's call.

116. Instead, Hurley called Plaintiff and told Plaintiff that he wanted to set up a phone meeting for the following day, Friday, March 4, 2016, at 5:00 pm.

117. Hurley would not tell Plaintiff what he wanted to discuss.

118. It was well known within HMH that managers would set up a mysterious phone meeting for a Friday at 5:00 pm when they intended to lay off or fire an employee.

119. Hurley had threatened to fire Plaintiff within the previous two weeks.

120. Under these extremely stressful circumstances, Plaintiff was forced to negotiate an exit from the company.

121. Plaintiff called Schmidt and left a message that Plaintiff wanted to negotiate an exit from the company.

122. Schmidt returned Plaintiff's call immediately.

123. Schmidt put together a severance agreement and mailed it to Plaintiff to sign.

124. Plaintiff signed the severance agreement, effective in March 2016.

125. Plaintiff was constructively discharged.

126. Because of the foregoing, Plaintiff has suffered emotional distress, physical decline, and economic harm.

127. Plaintiff has suffered emotional distress in the form of severe psychological distress, including anxiety, feeling demoralized, depressed, humiliated, and left with extreme worry for her job, from which she was forced out.

128. Plaintiff went into counseling with a mental health professional to discuss the devastating aspects of the inflicted emotional distress.

129. Plaintiff has suffered physical decline due to high blood pressure, heart arrhythmias, nausea, headaches, insomnia, and debilitating episodes of dizziness; requiring Plaintiff to go under the care of a cardiologist, who prescribed medication to relieve her arrhythmias and high blood pressure from the stress of the work environment.

130. Plaintiff has suffered economic harm from having been forced out of her job at her sixty-first birthday, depriving Plaintiff of her final peak earning years before her retirement.

131. Plaintiff has been unable to find full time employment, primarily because of her age, being close to retirement.

132. Plaintiff has been unable to afford health insurance.

133. Plaintiff has no spouse to rely upon for income, leaving her destitute with few options.

FIRST CAUSE OF ACTION

134. Plaintiff repeats and realleges paragraphs 1-133 as if fully set forth herein.

135. Plaintiff has been subjected to unlawful sexual harassment by Rubini in that he demanded sexual favors from her.

136. Plaintiff complained to both Hurley and HMH's HR department about Rubini's conduct.

137. Despite her complaints, HMH failed and refused to take effective remedial action.

138. HMH has discriminated against Plaintiff in violation of Title VII of the Civil Rights Act of 1964, as amended.

139. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

140. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

SECOND CAUSE OF ACTION

141. Plaintiff repeats and realleges paragraphs 1-140 as if fully set forth herein.

142. As stated above, Plaintiff has been subjected to unlawful sexual harassment by Rubini in that he demanded sexual favors from her.

143. Plaintiff complained to both Hurley and HMH's HR department about Rubini's conduct.

144. Despite her complaints, HMH failed and refused to take effective remedial action.

145. HMH has discriminated against Plaintiff in violation of pursuant to New York Executive Law § 296.

146. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

147. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

THIRD CAUSE OF ACTION

148. Plaintiff repeats and realleges paragraphs 1-147 as if fully set forth herein.

149. As stated above, Plaintiff has been subjected to unlawful sexual harassment by Rubini in that he demanded sexual favors from her.

150. Plaintiff complained to both Hurley and HMH's HR department about Rubini's conduct.

151. Despite her complaints, HMH failed and refused to take effective remedial action.

152. HMH has discriminated against Plaintiff in violation of New York Civil Rights Law § 40-c.

153. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

154. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

FOURTH CAUSE OF ACTION

155. Plaintiff repeats and realleges paragraphs 1-154 as if fully set forth herein.

156. As stated above, Plaintiff has been subjected to unlawful sexual harassment by Rubini in that he demanded sexual favors from her.

157. Plaintiff complained to both Hurley and HMH's HR department about Rubini's conduct.

158. Despite her complaints, HMH failed and refused to take effective remedial action.

159. HMH has discriminated against Plaintiff in violation of the New York State Constitution, article 1, § 11.

160. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

161. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

FIFTH CAUSE OF ACTION

162. Plaintiff repeats and realleges paragraphs 1-161 as if fully set forth herein.

163. Plaintiff has been subjected to unwanted and unwelcome sexual overtures, touching and conduct by Rubini.

164. Rubini has conditioned Plaintiff's continued employment on her acquiescence to his sexual demands and conduct.

165. Rubini is an aider and abettor within the meaning of the New York Executive Law, § 296.

166. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

167. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

SIXTH CAUSE OF ACTION

168. Plaintiff repeats and realleges paragraphs 1-167 as if fully set forth herein.

169. Plaintiff has been subjected to unwanted and unwelcome sexual overtures, touching and conduct by Rubini.

170. Plaintiff complained to both Hurley and HMH's HR department about Rubini's unwelcome and unwanted sexual overtures, touching and conduct.

171. Despite her complaints, HMH failed and refused to take effective remedial action.

172. This conduct by Rubini rises to the level of intentional infliction of emotional harm.

173. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

174. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

SEVENTH CAUSE OF ACTION

175. Plaintiff repeats and realleges paragraphs 1-174 as if fully set forth herein.

176. Plaintiff has been subjected to unwanted and unwelcome sexual overtures, touching and conduct by Rubini.

177. Plaintiff complained to both Hurley and HMH's HR department about Rubini's unwelcome and unwanted sexual overtures, touching and conduct.

178. Despite her complaints, HMH failed and refused to take effective remedial action.

179. By virtue of the foregoing, HMH has engaged in intentional infliction of emotional harm.

180. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

181. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

EIGHTH CAUSE OF ACTION

182. Plaintiff repeats and realleges paragraphs 1-181 as if fully set forth herein.

183. Plaintiff has been subjected to unlawful sexual harassment and discrimination by Hurley in that he directed sexual innuendos toward her, showed reckless indifference by refusing to report Rubini's behavior, and retaliated by further changing the tangible aspects of her employment.

184. Plaintiff reported Rubini's behavior to Hurley, complained to HMH's HR department and suffered under Hurley's increasingly hostile retaliation.

185. Despite her complaints, HMH failed and refused to take effective remedial action.

186. HMH has discriminated against Plaintiff in violation of Title VII of the Civil Rights Act of 1964, as amended.

187. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

188. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

NINTH CAUSE OF ACTION

189. Plaintiff repeats and realleges paragraphs 1-188 as if fully set forth herein.

190. As stated above, Plaintiff has been subjected to unlawful sexual harassment and discrimination by Hurley in that he directed sexual innuendos toward her, showed reckless indifference by refusing to report Rubini's behavior, and retaliated by further changing the tangible aspects of her employment.

191. Plaintiff reported Rubini's behavior to Hurley, complained to HMH's HR department and suffered under Hurley's increasingly hostile retaliation.

192. Despite her complaints, HMH failed and refused to take effective remedial action.

193. HMH has discriminated against Plaintiff in violation of New York Executive Law § 296.

194. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

195. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

TENTH CAUSE OF ACTION

196. Plaintiff repeats and realleges paragraphs 1-195 as if fully set forth herein.

197. As stated above, Plaintiff has been subjected to unlawful sexual harassment and discrimination by Hurley in that he directed sexual innuendos toward her, showed reckless indifference by refusing to report Rubini's behavior, and retaliated by further changing the tangible aspects of her employment.

198. Plaintiff reported Rubini's behavior to Hurley, complained to HMH's HR department and suffered under Hurley's increasingly hostile retaliation.

199. Despite her complaints, HMH failed and refused to take effective remedial action.

200. HMH has discriminated against Plaintiff in violation of New York Civil Rights Law § 40-c.

201. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

202. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

ELEVENTH CAUSE OF ACTION

203. Plaintiff repeats and realleges paragraphs 1-202 as if fully set forth herein.

204. As stated above, Plaintiff has been subjected to unlawful sexual harassment and discrimination by Hurley in that he directed sexual innuendos toward her, showed reckless indifference by refusing to report Rubini's behavior, and retaliated by further changing the tangible aspects of her employment.

205. Plaintiff reported Rubini's behavior to Hurley, complained to HMH's HR department and suffered under Hurley's increasingly hostile retaliation.

206. Despite her complaints, HMH failed and refused to take effective remedial action.

207. HMH has discriminated against Plaintiff in violation of the New York State Constitution, Article 1, § 11.

208. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

209. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

TWELFTH CAUSE OF ACTION

210. Plaintiff repeats and realleges paragraphs 1-209 as if fully set forth herein.

211. Plaintiff has been subjected to unwanted and unwelcome sexual innuendo and overtures by Hurley.

212. Hurley has conditioned Plaintiff's continued employment on her acquiescence to his sexual innuendo and Rubini's demands and conduct.

213. Hurley is an aider and abettor within the meaning of the New York Executive Law, § 296.

214. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

215. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

THIRTEENTH CAUSE OF ACTION

216. Plaintiff repeats and realleges paragraphs 1-215 as if fully set forth herein.

217. Plaintiff has been subjected to unwanted and unwelcome sexual innuendo and overtures by Hurley.

218. Upon Plaintiff's complaints of Rubini's unwelcome sexual conduct, and her complaints to HR, Hurley further retaliated against Plaintiff, forcing her out of HMH.

219. Despite her complaints, HMH failed and refused to take effective remedial action.

220. This conduct by Hurley rises to the level of intentional infliction of emotional harm.

221. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

222. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

FOURTEENTH CAUSE OF ACTION

223. Plaintiff repeats and realleges paragraphs 1-222 as if fully set forth herein.

224. Plaintiff has been subjected to unwanted and unwelcome sexual innuendo and overtures by Hurley.

225. Upon Plaintiff's complaints of Rubini's unwelcome sexual conduct, and her complaints to HR, Hurley further retaliated against Plaintiff, forcing her out of HMH.

226. Despite her complaints, HMH failed and refused to take effective remedial action.

227. By virtue of the foregoing, HMH has engaged in intentional infliction of emotional harm.

228. As a result of the foregoing, plaintiff has suffered physical and emotional harm.

229. As a result of the foregoing, plaintiff has suffered pecuniary losses and harm.

PRAYER FOR RELIEF

230. For her first cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

231. For her second cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

232. For her third cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

233. For her fourth cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

234. For her fifth cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

235. For her sixth cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

236. For her seventh cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

237. For her eighth cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

238. For her ninth cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

239. For her tenth cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

240. For her eleventh cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

241. For her twelfth cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

242. For her thirteenth cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

243. For her fourteenth cause of action, Plaintiff seeks damages for lost wages and benefits in an amount to be proven at trial, as well as damages for pain, suffering and humiliation, also in amount to be proven at trial.

244. In addition to the above money damages, Plaintiff seeks injunctive relief, reinstating her to her previous position, with all related compensation and benefits.

245. Alternatively, Plaintiff seeks front pay and benefits in an amount to be proven at trial for at least two years.

246. Plaintiff seeks attorneys' fees and costs to the extent allowed by applicable law and incurred by her.

Signed: Date:

Elaine M Chandler 4/26/17

Elaine M. Chandler, *Pro Se* Litigant

412 Cleveland Blvd, Fayetteville, NY 13066

315-345-9587

brightspirit@verizon.net

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Elaine M. Chandler**
412 Cleveland Blvd.
Fayetteville, NY 13066

From: **Boston Area Office**
John F. Kennedy Fed Bldg
Government Ctr, Room 475
Boston, MA 02203

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
525-2016-00325	**Scott M. Kelley, Investigator**	**(617) 565-3210**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosures(s)

Feng K. An,
Area Office Director

FEB 06 2017
(Date Mailed)

cc: **Barbara Schmitt**
Human Resources
10801 N. MOPAC EXPRESSWAY, BUILDING 3
Austin, TX 78759

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Boston Area Office

John F. Kennedy Federal Building
Government Center, Room 475
Boston, MA 02203-0506
Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820
Boston Status Line: (866) 408-8075
Boston Direct Dial: (617) 565-4805
TTY (617) 565-3204
FAX (617) 565-3196

Ms. Elaine M. Chandler
412 Cleveland Blvd.
Fayetteville, NY 13066

RE: Chandler v. Houghton Mifflin Harcourt Boston
EEOC Charge No.: 525-201600325

Dear Ms. Chandler,

The Equal Employment Opportunity Commission ("EEOC") has concluded its inquiry into your discrimination allegation. Under the EEOC charge prioritization procedures, we only focus our resources on charges that are most likely to result in findings of violations of the laws we enforce. In accordance with these procedures, the EEOC has evaluated this charge based on the evidence that you and Houghton Mifflin Harcourt Boston, (referred to hereinafter as "Respondent"), provided. The evidence fails to support that the Respondent violated the law and it is unlikely that additional investigation will result in our finding a violation.

According to the charge of employment discrimination filed on October 24, 2016, you alleged that the Respondent violated Title VII of the Civil Rights Act of 1964 as amended (Title VII), by failing to protect you from sexual harassment. You further allege that you were retaliated against and subsequently constructively discharged for making a complaint of sexual harassment to Respondent.

Records show that you began working for Respondent in February 2005 as a Sales Representative and continued working for Respondent until you resigned in March 2016. It is undisputed that you filed a complaint of sexual harassment with Respondent. However, Evidence shows that you were placed on a performance improvement plan (PIP) because of your poor performance evaluation. Records further show that the conditions of your PIP were substantially similar to those of other employees who had similar performance problems. There is no evidence which suggest you being placed on a PIP was in retaliation of your complaint of sexual harassment or that it was pretext for discrimination.

The Commission's investigation found no corroborative evidence which supports your allegations of sexual harassment or a hostile work environment. Evidence received shows that following your complaint, Respondent took swift and appropriate action by conducting a thorough investigation. During the initial stages of the investigation you resigned your position, requested and received a severance package. It is important to note that your severance agreement, which you legally executed, includes a release of claims. After its investigation, Respondent found no evidence to support your allegation. Never the less, Respondent required all managers involved to review company policies and or undergo sexual harassment training. There is no evidence which suggest you were subjected to conduct so severe and pervasive that a reasonable person in the same position would have resigned.

Based upon the Commission investigation, the Commission is unable to conclude that the information establishes probable violations of statues. This does not certify that Respondent is in compliance with the statutes. No finding is made as to any other issue that might be construed as having been raised by this charge.

Even though you may disagree, it is unlikely that the Commission would find a violation if it invested additional resources. Thus, the Commission's processing of this charge has been concluded. Included with this letter is your Notice of Dismissal and Right to Sue. Following this dismissal, you may only pursue this matter by filing suit against the Respondent named in the charge within 90 days of receipt of said notice. Otherwise, your right to sue will be lost.

If you have any questions, please contact Enforcement Supervisor Anthony Pino at (617) 565-3192.

On Behalf of the Commission:

FEB 06 2017

Date

For

Kenneth An
Boston Area Office Director